

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5099 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
PARAMEX SILK MILL

Versus

-----  
STATE OF GUJARAT

-----  
Appearance:

MR PM THAKKAR Senior Counsel with Mr. Navin Pahwa,  
Advocate for Petitioner  
Ms. Parmar, Asstt. Government Pleader for Respondent  
No. 1, 2

-----  
CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 03/10/96

ORAL JUDGEMENT

The petitioner by this petition challenges the act of issuance of notice dated 29.3.1995 by the Government so as to exercise the power in revision under Section 34 of the U.L.C. Act.

2. The facts in brief are that the petitioner is a

registered partnership firm. After the Urban Land Ceiling Act (for short "the Act") came into force the petitioner filed form No. 1 under Section 6(1) of the Act declaring the total lands in its possession. The Competent Authority after considering the declaration made and also the written statement that came to be filed under Section 8(3) of the Act passed the order dated 8.9.1992 holding that the petitioner was having 461.04 sq. mtrs. of land in excess of the ceiling limits. Against that order the petitioner preferred an appeal under Section 33 of the Act. After hearing the parties the Tribunal dismissed the appeal on 22.12.1993. The petitioner thereafter did not prefer any appeal and rest contented with the decision of the Tribunal. About one and half year thereafter the petitioner received a notice dated 29.3.1995 issued by the Government calling upon him to have his say qua examining the order passed by the Competent Authority, exercising the powers vested in it under Section 34 of the Act. By issuing the notice the Government in fact conveyed to the petitioner that in fact 9664 sq. mtrs. of land was in excess of the ceiling limit, and not what the Competent Authority held in that regard and therefore the Government wanted to review the order. The petitioner has therefore challenged the validity and legality of that action of issuance of notice by preferring this petition.

3. Assailing the act of issuance of the notice, Mr. Pahwa, the learned Advocate representing the petitioner submitted that in view of Section 34 of the Act it was beyond the powers of the Government to take up the matter in revision and review the order already passed and confirmed by the Tribunal. Against the submission the learned A.G.P. on behalf of the respondents submitted that there was no wrong if the powers under Section 34 of the Act were exercised as and when found necessary.

4. In this case the only point that arises for consideration is about the exercise of powers under Section 34 of the Act. The Section is couched in the words as follows:

"The State Government may, on its own motion, call for and examine the records of any order passed or proceedings taken under the provisions of this Act and against which no appeal has been preferred under Section 12 or section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and such order with respect thereto as it may think fit."

Even a plain reading of the Section shows that the Government cannot exercise the powers vested under Section 34 of the Act after the appeal is preferred and disposed it of on merits either under Section 12 or Section 30 or Section 33 of the Act because the words "and against which no appeal has been preferred" significantly connote the same meaning. Such provision is made so that there can have the end of the matter or finality in the matter rather than several innings thereof on several grounds the merits of which are in appeal dissected at length and necessary details, and keep the parties in abeyance or suspension or on tenter-hook for uncertain time which the law hates. In view of such clear provision, the Government ought not to have issued the notice as issuance of the notice is contrary to law and the above stated provision. When such provision is very clear, no authority on the point is indeed necessary. But if at all it is required, suffice it to say that this court, when came across with the like issue in the case of JAGDISHBHAI NAGARBHAI PATEL VS. STATE OF GUJARAT 37(2) [1996(2)] G.L.R. 499 has, considering the relevant provision, laid down that the powers under Section 34 of the Act can be exercised if no appeal is preferred. Where the appeal is preferred under Section 33 of the Act and is dismissed, revisional powers cannot be exercised and if the notice is issued the same has to be quashed. In view of such clear law on the point, the action of the Government of issuing the notice is required to be quashed and for that purpose the petition requires to be allowed.

5. In view of the matter the petition is allowed and the notice dated 29.3.1995 issued by the respondent Government under Section 34 of the Act is hereby quashed. No order as to costs in the circumstances of the case. Rule is made absolute accordingly.

ooooo